LAWRENCE E. FELDMAN & ASSOCIATES
432 Tulpehocken Avenue
Elkins Park, PA 19027
(215) 885-3302

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAWRENCE E. FELDMAN d/b/a LAWRENCE E. FELDMAN & ASSOCIATES 432 Tulpehocken Avenue Elkins Park, PA 19027 v. GOOGLE, INC. .1600 Amphitheatre Parkway Mountain Valley, CA 94043	: : : : : : : : : : :	**No. 06-cv-2540**

COMPLAINT

Plaintiff by and through its undersigned counsel, brings this action against Defendant, and in support thereof avers as follows:

1. Plaintiff Lawrence E. Feldman d/b/a Lawrence E. Feldman & Associates is an unincorporated law firm with an office in Montgomery County, the Commonwealth of Pennsylvania. The firm practices in the five county area, including Philadelphia County and advertises in print media in those counties as well as on the Internet.

2. Defendant Google, Inc. is a corporation organized under the laws of the State of Delaware, with its principle place of business in Mountain View, California. Google provides Internet search engine services to Internet users and advertising services to individuals, businesses as well as governmental and educational entities.

3. This cause of action arose out of transactions or occurrences which took place in whole or in part in Philadelphia.

4. This Court has personal jurisdiction over the Defendant.

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FACTS

5. On or about January 2003, Plaintiff purchased advertising from Defendant's "AdWord" Program wherein Defendant was to provide internet advertising services through it "Google Adwords" program in exchange for payment from Plaintiff per click as explained in the following paragraphs.

6. This AdWord program is keyword-triggered much like Google's traditional search engine service, whereby a potential consumer/customer enters a search word or words in Google's search engine, which results in a hierarchy of website links of business or other entities that signed up with AdWords to have their business website link be among the search results for those words. In this way, the consumer is likely to then "click" on the advertiser's web link, giving the advertiser the opportunity to sell its goods or services to that customer.

7. Advertisers can purchase as few or as many key or "Adwords" as they wish. Many law firms have used the Adwords campaign to advertise for clients. For example, Plaintiff purchased Adword "Vioxx" at or around the time when the arthritis medication Vioxx was removed from the market. People searching on Google for a law firm handling injuries from Vioxx would see Plaintiff's website as one of their search results.

8. If the searcher clicked on Plaintiffs' website, then Defendant would charge Plaintiff for that click. This is now widely known as "pay per click" advertising. According to Defendant's website "With Google AdWords you create your own ads, choose keywords to help us match your ads to your audience and pay only when someone clicks on them."

9. Advertisers such as Plaintiff make bids for the key words that will trigger their advertisements to appear in a search performed by a potential customer. The highest bidder for a key word or phrase will find its ad at the top of the list of a search result performed by a potential consumer. Advertisers such as Plaintiff, are charged by Defendant for each and every time someone clicks on its advertisement (typically, a hyperlink to the advertiser's own website).Charges can average as low as 50 cents, but can be as high as $60 or $70 per key word for those words that are heavily sought after, such as Vioxx.

10. While Defendant touts that advertisers can reach more than 80% of Internet users, the "pay per click" system has a serious flaw. This flaw is known colloquially as "click

fraud." Defendant's name for it is "improper clicks."

11. These improper clicks or click fraud describe the practice of clicking(with a mouse) on a search advertisement with no intention of doing business with the advertiser. These ill-intended purposeful clicks are done to drive up the price an advertiser pays to Google by way of the "pay per click" model. Fraudulent clicks could be perpetrated by an advertiser's competitor, with the intent to use up a rival's advertising budget, causing the advertiser to cease advertising altogether, in an effort to boost their own position on the hierarchy, thereby stealing potential customers. Some of these perpetrators are even armed with software programs that automatically click on designated ads hundreds or thousands of times.

12. This fraudulent activity is preventable by using efforts to track the use of a pay per click advertisement, including who is doing the clicking and how often the same individual/entity clicks on it.

13. This tracking can be accomplished by computer programs that count the number of clicks originating from a single source and whether or not those clicks result in a sale. Another effective mechanism for tracking is to track it at the website on which the advertisement appears. Websites that host advertisements provide tracking data to Google with every click.

14. Google admitted that click fraud is a pervasive problem as recently as 2004 when its Chief Financial Officer, George Reyes, characterized it as "the biggest threat to the Internet economy." Later these fears were downplayed by Google's co-founder, Sergey Brin. In fact, some analysts believe that as many as 20% of clicks are fraudulent. Other studies show this number to be as high as 30%.

15. Google has in the past, provided a relatively small number of advertisers a refund on those clicks that it deems to be improper clicks, so Google has some mechanism in place to ascertain which clicks are improper or fraudulent after the fact.

16. In its 2005 Annual Report, Google stated that it was exposed to the risk of fraudulent clicks on its ads by persons seeking to increase the advertising fees paid to Google Network members. Approximately 99% of Google's revenue is derived from AdWords.

17. From the inception of its AdWords and AdSense Programs, Google took no effort to track or prevent the instance of click fraud and failed to adequately warn Plaintiff about it.

18. Starting in or around January 2003, Plaintiff purchased Adwords for Vioxx, Bextra, Celebrex and other advertising campaigns in an effort to steer potential clients who may have been harmed by these drugs which were under scrutiny by the FDA and one of which, Vioxx, that was voluntarily withdrawn from the market.

19. Plaintiff was charged approximately of $100,000.00 in AdWords between January 2003 and December 31, 2005.

20. Plaintiff contacted Defendant on April 14, 2006 to request an investigation of his account because he believed he was a victim of click fraud.

21. Defendant refused, stating that id does not keep any records on any account for more than the most recent three months.

22. Defendant claims that it does not keep any records on an advertiser's account and click history for more than the past three months.

23. Despite this fact, Defendant has its staff respond to requests for investigation and refund of advertising dollars by saying that it cannot conduct a full investigation because it has disclaimed liability for clicks older than 60 days. Google was unwilling to conduct an invalid click investigation for the dates Plaintiff selected. Thus, by its own business practices, Defendant has a built in system whereby it charges customers such as Plaintiff for clicks whether they are fraudulent or not.

COUNT I

(Breach of Implied Contract)

24. Plaintiff incorporates paragraphs 1 through 23 as though the same were set forth below at length.

25. On or about January 2003, Plaintiff purchased advertisements through Defendant Google's AdWords Program.

26. Based on the conduct between Defendant and Plaintiff an implied in law contract arose.

27. Defendant breached its implied in law contract by charging the Plaintiff for fraudulent clicks when Plaintiff only agreed to be charged for actual clicks.

28. As a direct and proximate result of Defendant's breach of implied contract,

Plaintiff has been suffered approximately $50,000.00 in damages.

COUNT II

(Breach of Implied Covenant of Good Faith and Fair Dealing)

29. Plaintiff incorporates paragraphs 1 through 28 as though the same were set forth below at length.

30. From this contract there existed an implied covenant of good faith and fair dealing which required Defendant to not do anything that would have the effect of injuring the Plaintiff's right to receive the full benefit of its products.

27. Nonetheless, during the time period between January 2003 and December 31, 2005, Plaintiff was the victim of click fraud.

28. Defendant breached this covenant of good faith and fair dealing by failing to protect Plaintiff from click fraud, even though Defendant was aware that this was a pervasive problem with its service. Defendant further breached this covenant of good faith and fair dealing by failing to take any significant measures to track or prevent click fraud, and failed to adequately advise and warn Plaintiff about this problem before entering into the Agreement.

29. Defendant further breached the Agreement by charging Plaintiff for fraudulent clicks, which was not agreed to by the parties. Plaintiff was only to be billed for actual clicks.

30. As a direct and proximate result of Defendant's breach of the covenant of good faith and fair dealing, Plaintiff has suffered approximately $50,000.00 in damages.

COUNT III

(Fraudulent Inducement)

31. Plaintiff incorporates paragraphs 1 through 30 as though the same were set forth below at length.

32. Defendant knowingly and willfully omitted to inform Plaintiff about the existence

and pervasiveness of click-fraud. Defendant knowingly misrepresented the safety and security of its pay-per-click advertising system.

33. Plaintiff relied on the false representations and omissions made by Defendant which induced him into paying for fraudulent clicks instead of only actual clicks. Had Plaintiff known about the problem of "click-fraud" he never would have purchased advertising with the Defendant.

34. As a result of Defendant's false representations, concealments, omissions and non-disclosures, Plaintiff sustained approximately $50,000.00 in damages.

COUNT IV

(Negligence)

35. Plaintiff incorporates paragraphs 1 through 34 as though the same were set forth below at length.

36. Defendant owed a duty to Plaintiff to monitor its Adwords program for click fraud and to protect Plaintiff from this unscrupulous practice by utilizing appropriate software and other measures to track fraudulent clicks so that Plaintiff would not be charged for them.

37. Defendant breached its duty to Plaintiff by billing Plaintiff for fraudulent clicks.

38. Defendant's breach of this duty was the proximate and direct cause of Plaintiff's damages in overpayment for advertising

39. Plaintiff sustained damages approximately $50,000.00 in damages.

COUNT V

(Unjust Enrichment)

40. Plaintiff incorporates paragraphs 1 through 39 as though the same were set forth below at length.

41. Defendant received money from Plaintiff for a specific purpose, to wit, to pay for actual, legitimate clicks to Plaintiff's advertisement through Defendant's Adwords Program.

42. Defendant has wrongfully charged Plaintiff for and received money belonging to Plaintiff which was not applied for the specific purpose of purchasing legitimate clicks on

Plaintiff's advertisements under the Adwords Program.

43. To the contrary, Defendant took Plaintiff's money and applied it toward all clicks on Plaintiff's advertisements under the AdWord Program, including fraudulent clicks.

44. Defendant has received approximately $50,000 which in equity and in good conscience it is not permitted to keep and therefore should be paid over to the Plaintiff.

45. Accordingly, Defendant must be disgorged of all improper monies it has received from Plaintiff.

COUNT VI
(Violation of Business Professions Code 17200, et. seq.)

46. Plaintiff incorporates paragraphs 1 through 45 as though the same were set forth below at length.

47. California Business & Professions Code § 17200 provides that "unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice."

48. Defendant's conduct in charging Plaintiff for fraudulent clicks constitutes an unlawful, unfair or fraudulent business act or practice under the Code.

49. Defendant's failure to keep computer logs on Plaintiff's entire Adwords campaign in order to track, monitor and refund any monies wrongfully charged to Plaintiff likewise constitutes and unlawful, unfair, or fraudulent business act or practice.

50. As a proximate result of Defendant's conduct alleged herein, Plaintiff has suffered approximately $50,000.00 in damages.

51. Unless restrained by this Court, Defendant will continue to engage in the unlawful ,unfair and fraudulent business practices alleged herein, violating Section 17200 of the Business and Professions Code.

53. Plaintiff is entitled to the disgorgement of any profits Defendant obtained as a result of its unlawful conduct and restitution of monies it paid for fraudulent clicks throughout

the period of its Agreement with Defendant.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendant.

Dated: August 9, 2006

LAWRENCE E. FELDMAN & ASSOCIATES

BY: ______________________

Lawrence E. Feldman, Esquire
432 Tulpehocken Avenue
Elkins Park, PA 19027
(215) 885-3302
(215) 885-3303

Attorney for Plaintiff